

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:
Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

In Re:
City of New York

CONFIDENTIAL (Per 2004 MDL 1358 Order)

January 13, 2009

Videotaped Deposition of
DONALD K. COHEN, CPG, 30(b)(6) witness
for the City of New York, held in the law
offices of McDermott, Will & Emery, 340
Madison Avenue, New York, New York 10173,
beginning at approximately 10:22 a.m.,
before Ann V. Kaufmann, a Registered
Professional Reporter, Certified Realtime
Reporter, Approved Reporter of the U.S.
District Court, and a Notary Public.

GOLKOW TECHNOLOGIES, INC.
877.370.3377 ph|917.591.5672 fax
deps@golkow.com

1 APPEARANCES:
2 SHER LEFF, LLP
VICTOR M. SHER, ESQUIRE
3 vsher@sherleff.com
450 Mission Street, Suite 400
4 San Francisco, CA 94105
(414) 348.8300
5 Counsel for City of New York
6
NEW YORK CITY LAW DEPARTMENT
7 OFFICE OF THE CORPORATE COUNSEL
AMANDA C. GOAD, ESQUIRE
8 agoad@law.nyc.gov
SARAH KOHEL-SMUCKER, ESQUIRE
9 100 Church Street
New York, NY 10007
10 (212) 676-8517
Counsel for the City of New York and the witness
11
HUNTON & WILLIAMS
12 GEORGE P. SIBLEY, III, ESQUIRE
gsibley@hunton.com
13 Riverfront Plaza, East Tower
951 East Byrd Street
14 Richmond, VA 23219
(804) 788-8200
15 Counsel for Flint Hills Resources
16
WALLACE KING DOMIKE & REISKIN, PLLC
17 PETER C. CONDRON, ESQUIRE
pcondron@wallaceking.com
18 1050 Thomas Jefferson Street, N.W.
Washington, DC 20007
19 (202) 204-1000
Counsel for Shell and Chevron
20
BLANK ROME, LLP
21 SANDRA J. DOYLE, ESQUIRE
doyle@blankrome.com
22 One Logan Square
130 North 18th Street
23 Philadelphia, PA 19103
(215) 569-5500
24 Counsel for Lyondell Chemical Co.

1 APPEARANCES (continued):

2 McDERMOTT WILL & EMERY, LLP
3 MALINDA MORAIN, ESQUIRE
mmorain@mwe.com
340 Madison Avenue
4 New York, NY 10173
(212) 547-5400
5 Counsel for Exxon Mobil

6
7 EIMER, STAHL, KLEVORN & SOLBERG, LLP
PAMELA R. HANEBUTT, ESQUIRE
phanebutt@eimerstahl.com
8 224 S. Michigan Avenue, Suite 1100
Chicago, IL 60604
9 (312) 660-7625
Counsel for CITGO

10
11 KING & SPALDING, LLP
RUSSELL D. WORKMAN, ESQUIRE
rworkman@kslaw.com
12 1100 Louisiana, Suite 4000
Houston, TX 7702-5213
13 (713) 751.3200
Counsel for the Chevron Defendants

14
15 APPEARANCES: (via telephone)

16 BLEAKLEY PLATT & SCHMIDT, LLP
JOHN A. RISI, ESQUIRE
jrisi@bpslaw.com
17 One North Lexington Avenue
White Plains, NY 10601
18 (914) 287-6104
Counsel for Getty Petroleum Marketing, Inc.

19
20 BRACEWELL & GIULIANI, LLP
BENJAMIN PATTON, ESQUIRE
ben.patton@bgllp.com
21 711 Louisiana Street, Suite 2300
Houston, TX 77002
22 (713) 221-1404
23 Counsel for Valero Energy Corporation
and Total Petrochemicals USA

24

1 APPEARANCES: (Via telephone Continued)

2 GOODWIN PROCTOR

NICOLE L. PICARD, ESQUIRE

3 npicard@goodwinproctor.com

Exchange Place

4 53 State Street

Boston, MA 02109

5 (617) 570-1900

Counsel for Gulf Oil Limited Partnership

6

7 BEVERIDGE & DIAMOND, P.C.

PATRICK R. JACOBI, ESQUIRE

8 pjacobi@bdlaw.com

1350 I Street NW - Suite 700

9 Washington, DC 20005-3311

(202) 789-6000

10 Counsel for Sunoco

11

PRESENT:

12

Larry Moskowitz, Videographer

13 Golkow Technologies, Inc.

14

15

16

17

18

19

20

21

22

23

24

1 DEPOSITION SUPPORT INDEX
2
3 DIRECTION TO WITNESS NOT TO ANSWER
4
5 PAGE
6 30
7 71
8 72
9 281
10 283
11 288
12
13 REQUEST FOR PRODUCTION OF
14 INFORMATION/DOCUMENTS
15 [NONE]
16
17 STIPULATIONS
18 Page Line
19
20 QUESTIONS MARKED
21 [none]
22
23
24

1 THE VIDEOGRAPHER: Good
2 morning. We're now on the record. My
3 name is Larry Moskowitz and I'm a
4 videographer for Golkow Technologies,
5 Inc. Today's date is January 13, 2009,
6 and the time is 10:22 a.m. This video
7 deposition is being held at McDermott,
8 Will & Emery, 340 Madison Avenue, New
9 York, New York, in the matter of In
10 Re: MTBE for the United States District
11 Court, Southern District of New York.
12 The deponent today is Donald Cohen.

13 Will counsel and those
14 present please identify themselves for
15 the record.

16 MR. CONDRON: Peter Condron,
17 Wallace, King, Domike & Branson --
18 Reiskin, excuse me, for Shell and
19 Chevron.

20 MR. SIBLEY: Trey Sibley,
21 Hunton & Williams, for Flint Hills
22 Resources, LLP.

23 MR. WORKMAN: Rusty Workman,
24 King & Spalding, for the Chevron

1 defendants.

2 MS. MORAIN: Malinda Morain
3 with McDermott, Will & Emery for Exxon
4 Mobil.

5 MS. HANE BUTT: Pamela
6 Hanebutt, Eimer Stahl, for CITGO
7 Petroleum Corporation.

8 MS. DOYLE: Sandra Doyle of
9 Blank Rome for Lyondell.

10 MR. SHER: Why don't we have
11 defense counsel on the phone identify
12 themselves.

13 MR. PATTON: Ben Patton with
14 Bracewell & Guiliani, for Valero.

15 MS. PICARD: Nicole Picard
16 from Goodwin Proctor, LLC, for Gulf Oil
17 Limited Partnership.

18 MR. JACOBI: Patrick Jacobi
19 from Beveridge & Diamond for Sunoco.

20 MR. RISI: John Risi,
21 Bleakley, Platt & Schmidt, Getty
22 Petroleum Marketing, Incorporated.

23 MR. SHER: Anybody else on
24 the phone?

1 Vic Sher for the City and
2 the witness and with me is Amanda Goad
3 and Sarah --

4 MS. KOGEL-SMUCKER: Kogel-
5 Smucker.

6 MR. CONDRON: Good morning,
7 Mr. Cohen -- I'm sorry. Please swear
8 him in.

9 DONALD K. COHEN, CPG,
10 30(b)(6) 75-20 Astoria Boulevard, Suite
11 350, Jackson Heights, New York, NY
12 11370 having been duly sworn, was
13 examined and testified as follows:

14 EXAMINATION

15 BY MR. CONDRON:

16 Q. Good morning, Mr. Cohen.
17 My name is Pete Condron. I represent
18 Shell and Chevron in this action.

19 Could you state your name
20 for the record, please?

21 A. Donald K. Cohen.

22 Q. Could we get your business
23 address as well?

24 A. It is -- I work for Malcolm

1 Pirnie, Incorporated, 75-20 Astoria
2 Boulevard, Suite 350, Jackson Heights,
3 New York. ZIP code is 11370.

4 Q. Very good. What is your
5 position with Malcolm Pirnie, sir?

6 A. I'm a senior associate with
7 the firm.

8 Q. And we're here to take your
9 testimony in this matter pursuant to a
10 deposition notice that the defendants
11 served on the City of New York,
12 requesting a representative to testify
13 about certain topics. Do you understand
14 that you are here as a representative of
15 the City today?

16 A. Yes, I do.

17 Q. I know you have had your
18 deposition taken before, you provided us
19 with a list of your previous testimony,
20 and I appreciate that. Just a couple of
21 ground rules to go over before we get
22 started.

23 We're here to take your
24 testimony today, as I said. I'd ask

1 that you give us your best testimony,
2 that you not speculate; but if you need
3 to estimate something, we are entitled
4 to your best estimate of something as
5 opposed to a guess. Do you understand
6 the difference between an estimate and a
7 guess?

8 A. Yes, I do.

9 Q. Okay. Also today there's a
10 number of counsel in the room. From
11 time to time your counsel may object. I
12 will be asking questions. I just ask
13 that you not speak over either myself or
14 your own counsel while we're trying to
15 take your testimony. The court reporter
16 has a difficult time taking down more
17 than one person talking at once, despite
18 how good she actually is. And I would
19 just ask that you wait for my question
20 to finish, perhaps your counsel may
21 object, and then when you answer, just
22 make sure that you are the only one
23 speaking. Is that okay?

24 A. That's okay.

1 Q. In addition, when we talk
2 in normal conversation, we tend
3 sometimes to nod our heads or say uh-huh
4 or unh-unh, and unfortunately when you
5 are trying to create a record, that
6 doesn't come through. So I may prompt
7 you from time to time with something
8 like, Is that a yes or is that a no?
9 I'm not trying to be rude or
10 disrespectful; I just want to make sure
11 that it is clear for the record that you
12 are saying yes or no. Is that okay?

13 A. That's okay, yes.

14 Q. Very good. If we could get
15 this marked as your -- the first
16 exhibit. It is a copy of the deposition
17 notice in this matter.

18 I have a copy for counsel.
19 Here is a couple extras. I didn't bring
20 enough for everybody.

21 (Below-described document
22 marked Cohen Exhibit 1.)

23 BY MR. CONDRON:

24 Q. Mr. Cohen, you have been

1 A. Yes, there are.

2 Q. What plans exist for doing
3 that?

4 A. It is included in the scope
5 of work for the -- when the design for
6 Station 6 restarts.

7 Q. And that's sometime in
8 2011?

9 A. Correct, although the DEC
10 through its work on Westside has been
11 working through our same community group
12 and that's ongoing.

13 Q. With regard to Station 6,
14 Mr. Cohen, how many wells will be part
15 of the Station 6 project?

16 A. In total there will be six
17 wells.

18 Q. And that's including well
19 6C?

20 A. That's correct.

21 Q. And that's screened in the
22 Lloyd Aquifer; correct?

23 A. That's correct.

24 Q. The other wells are all

1 are being pumped, and these are the
2 calculated blended water quality
3 criteria.

4 Q. Okay. But why does the PCE
5 level stay the same while the MTBE level
6 declines?

7 A. I believe it's because as
8 we increase pumping rates from the
9 various shallow wells, we see, in this
10 case, the flow-weighted averaging would
11 have higher concentrations of PCE,
12 whereas the use of well 6C would be
13 fairly constant in adding that, and
14 that, of course, has no MTBE or PCE. So
15 it has to do with the flow-weighted
16 average between the various wells and
17 the changing flow rates at the various
18 wells.

19 Q. Now, in selecting the VOC
20 removal treatment for Station 6 in
21 December of 2004, did you use any kind
22 of computer design tool or software in
23 order to determine what the most
24 effective treatment would be?